IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.315 OF 2006

IN

SUMMARY SUIT NO.436 OF 2006

Mohanlal Damji Pasad ...Plaintiff

v/s

Purbai Negshi and anr. ...Defendants

Mr K.H. Hali i/b M/s Halai and Co. for Plaintiff.

Mr S.L. Mhatre for Defendants.

CORAM : D.K. DESHMUKH J.

DATE : 29TH NOVEMBER 2006.

P.C. :-

1. The plaintiff's claim is based on promissory note. The defendants do not deny the signature on the promissory note. According to the defendants, the promissory note, however, was not executed on 1st April 2004 but was executed much prior when the defendants had taken loan from the plaintiff which loan, according to the defendants, has been repaid by the defendants. The defendants submit that on 1st April 2004, the defendant No.1 was not in a position to sign the promissory note because she was sick. According to the defendants, she was unconscious on that day and she continued to be unconscious till today. The second defence of the defendants is that the plaintiff is a moneylender and there is a moneylending transaction and therefore the suit is not maintainable. So far as the first defence is concerned, the material produced by the defendants does not show that the defendant No.1 was unconscious as stated by the defendants on 1st April 2004. There is no material on record even to suggest that the promissory note was signed on any day prior to 1st April 2004. So far as the defence that it is a moneylending transaction is concerned, the plaintiff has stated that his business is that of a dealer in grains and seeds and this amount was advanced to the defendants as friendly loan because

there was long standing relationship between the plaintiff and the defendants. This averment made in the plaint that the plaintiff is a dealer in grains and seeds and that there is long standing relationship between the parties and this was a friendly loan given by the plaintiff to the defendants is not denied by the defendants. It is obvious that both the defences raised on behalf of the defendants have no substance. In fact, the defendants have no defence to offer. The defendants therefore are not entitled to leave to defend the suit. The plaintiff, on the contrary, is entitled to a decree. Summons for judgment is therefore granted. Suit of the plaintiff is granted in terms of prayer clauses (a) and (b). Refund of court fees as per rules.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.